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which will throw a cloud on the title of complainant's land, where it appears upon the face of the bill or of an exhibit filed therewith that the complainant is not in possession. A bill to remove the cloud upon the title to land must aver title and possession in the complainant; and, even when such averments are made, the bill will be dismissed, at the hearing, for want of jurisdiction, if the evidence fails to show such possession.

MCCOY V. NORFOLK & CAROLINA RAILROAD COMPANY.—Decided at Richmond, January 17, 1901.—*Buchanan, J.*:

1. **PLEADING**—*Declaration—Similar counts—Demurrer—Harmless error.* A plaintiff is not injured by sustaining a demurrer to two counts of a declaration where all the evidence that could have been given in under those counts can be given in under remaining counts of the declaration.

2. **MASTER AND SERVANT**—*Personal injury of servant—Proximate cause—Concurring negligence of master and fellow-servant.* Where a servant is injured through the failure of the master to perform any of the duties which the law imposes on him personally, such as providing, inspecting and keeping in repair and good order reasonably safe and suitable machinery, instrumentalities and appliances for the use of a servant in his employment, and such failure proximately contributes to the injury, it is no defence for the master that the negligence of a fellow-servant also contributed to the injury. But the negligence of the master must proximately contribute to the injury. If the injury follows as a direct and immediate consequence of some intervening cause, the law will refer the injury to the last or proximate cause, and will not trace it to that which was remote.

3. **INSTRUCTIONS**—*Misleading.* It is not error to refuse instructions which, if not erroneous, are misleading.

MILLER V. MILLER.—Decided at Richmond, January 17, 1901.—*Cardwell, J.*:

1. **ARBITRATION**—*Boundaries—Parol submission—Parol award.* Parties may agree by parol to settle by arbitration the dividing line between their lots of land, and an award made in pursuance of a submission for that purpose will bind the parties, although the arbitrators make a parol award, where the submission does not require the award to be in writing.

2. **RESULTING TRUST**—*Payment of Purchase money—Parol evidence.* Where one buys land with the money of another, a trust results by operation of law in favor of the party furnishing the money. The trust may be established by parol, but the proof must be clear.

3. **RESULTING TRUST**—*Payment of part of purchase money—Aliquot part.* In order to establish a resulting trust, arising from the payment of purchase money by another, it is not necessary that the beneficiary should have furnished the whole of the purchase money, nor an exact aliquot part thereof. If the amount paid is certain, a trust will result with respect to an undivided share of the land proportioned to his share of the whole price.